

## Environmental Protection Agency

§ 32.100

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AUTHORITY: E.O. 12549; 41 U.S.C. 701 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 *et seq.*; E.O. 12689; E.O. 11738; Pub. L. 103-355 § 2455.

SOURCE: 53 FR 19196, 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990, and at 60 FR 33036, June 26, 1995.

## Subpart A—General

### § 32.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of “ineligible” in § 32.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103-355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(e) Facilities ineligible to provide goods, materials, or services under Federal contracts, loans or assistance, pursuant to Section 306 of the Clean Air Act (CAA) or Section 508 of the Clean Water Act (CWA) are excluded in accordance with the terms of those statutes. Reinstatement of a CAA or CWA ineligible facility may be requested in accordance with the procedures at § 32.321.

[60 FR 33040, 33059, June 26, 1995, as amended at 61 FR 28756, June 6, 1996]

#### § 32.105 Definitions.

The following definitions apply to this part:

**Adequate evidence.** Information sufficient to support the reasonable belief that a particular act or omission has occurred.

**Affiliate.** Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

**Agency.** Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

**Agency head.** Administrator of the Environmental Protection Agency.

**CAA or CWA ineligibility.** The status of a facility which, as provided in section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), is ineligible to be used in the

performance of a Federal contract, subcontract, loan, assistance award or covered transaction. Such ineligibility commences upon conviction of a facility owner, lessee, or supervisor for a violation of section 113 of the CAA or section 309(c) of the CWA, which violation occurred at the facility. The ineligibility of the facility continues until such time as the EPA Debarring Official certifies that the condition giving rise to the CAA or CWA criminal conviction has been corrected.

**Civil judgment.** The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

**Conviction.** A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of *nolo contendere*.

**Debarment.** An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

**Debarring official.** An official authorized to impose debarment. The debarring official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

**EPA.** Environmental Protection Agency.

**Facility.** Any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations at which, or from which, a Federal contract, subcontract, loan, assistance award or covered transaction is to be performed. Where a location or site of operations contains or includes more than one building, plant, installation or structure, the entire location or site shall be deemed the facility unless otherwise limited by EPA.

**Indictment.** Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.